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December 18, 1998

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PRIVILEGED SETTLEMENT COMMUNICATION

Re: Union Pacific Railroad's Good Faith Offer - Wallace-Mullan Branch Rail Line

Counsel:

This response is to your letter of December 3, 1998.

Based on our review of your letter and the positions taken in response to the offer reflected in my letter of November 4, 1998, it appears that we have narrowed the gap and that the issues remaining can be resolved and an agreement in principle reached if the parties continue to proceed on a good faith basis.

Using your December 3 letter as the starting point, our response will address the issues which appear to remain unresolved or require clarification.

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Disposal Site: We recognize that, at this time, EPA and the State have projected the closure of the slag pile at the end of 2000. To the extent that that closure date is extended, Union Pacific would expect that it have the benefit of any such extension. We share your view that it is important that all of the conditions necessary for commencement of the salvage operation be completed as quickly as possible so that we will not require the use of the disposal site after the year 2000.

Response Action/Trail O&M: We recognize that the issue of long term or perpetual responsibility for response action O&M is an issue of importance to the Trustees and EPA. Union Pacific is prepared to address that issue in context with other items identified in your letter.

We think that it is important that the parties address the issue of continuing oversight and incorporate the provisions of any such arrangement into our agreement in principle. It is not Union Pacific's intention to pay additional costs for STT personnel to perform routine inspections of the trail right of way. We have proceeded on the assumption that future oversight will be limited to the construction phase of the response and possibly any five (5) year review.

With respect to the proposed five year review, we think it important to clarify the scope of the review. It is our understanding that any such review would be limited to review of the physical response actions identified in the Consent Decree and would not involve alternative response actions or responses off of the trail right of way.

In general, we agree with the elements of the response action O&M as outlined in our respective letters.

With respect to the issue of long term response action O&M, Union Pacific had previously suggested that we utilize revenue from leases and other agreements as a fund for long term O&M. We have reviewed that issue with our Real Estate Department and find that it is not a feasible alternative.¹ In order to fund the long term response action O&M, Union Pacific would propose that we fund, by periodic payment, an escrow account and that at the end of some appropriate period, which we would suggest is ten (10) years, Union Pacific and STT review the history of the O&M costs and determine the adequacy of the then existing escrow account to fund the long term O&M responsibility, as they may then define it. We would propose that Union Pacific contribute \$100,000 per year beginning in the year 2001 into the escrow for a period of five (5) years as the "seed money" for the long term response action O&M. We would propose that this review process permit the parties to agree on the adequacy of the escrow or additional funding, (in which case Union Pacific would be released from its obligations beyond the initial 30

¹ It is our intention to assign these agreements to the STT without conditions with respect to the use of the revenue. As I have indicated to Curt Fransen, we do have recommendations as to how best those agreements can be managed to the ultimate benefit of the parties.

year period), or to permit Union Pacific to assume the obligation beyond 30 years and to have the use or return of the escrowed funds.

While we cannot require as a condition of the agreement that the STT assume some portion of the long term response action O&M, and that obligation would remain with Union Pacific, we think it appropriate that the STT be committed to use its best efforts to obtain funds either from the legislature or through grant applications, such as the current ISTE A program to assist Union Pacific with the long term O&M responsibility. For example, funds may be available for resurfacing of the asphalt trail. We also think it appropriate that the STT participate with Union Pacific to seek FEMA funds in the event of a catastrophic flood event which damages the trail right of way.

With respect to long term catastrophic flood damage, Union Pacific would assume this obligation subject to the right at any time within the initial 30 year period to request that STT assume this obligation if the parties can then agree on the adequacy of a fund for such purpose.

Trail O&M: We appreciate the efforts undertaken by the STT to obtain ISTE A funds to assist in the creation of a fund for the initial ten (10) year trail O&M. We would, therefore, propose that in order to fund STT for the initial ten (10) year trail O&M functions, Union Pacific would, effective on the entry of the Consent Decree, deposit \$1.5 million into an account for such purpose and that an additional \$1 million be deposited into that account when the \$1 million ISTE A funds become available to Union Pacific in connection with the trail construction. We recognize that as part of this arrangement, the STT will undertake the maintenance of the bridges on the trail right of way.

It has been our understanding that Union Pacific's undertakings with respect to Trail O&M and response action O&M would satisfy the STT's requests with respect to these areas of responsibilities. We, therefore, do not understand and cannot accept the request for unspecified "start up" costs. We believe that Union Pacific's funding commitment is more than generous and that the STT should seek any additional "start up" funds from other sources.

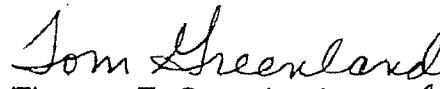
Past and Future Costs: As we have previously indicated, we think that it is appropriate that a fixed amount be established for the past costs incurred for the period through the development of the Consent Decree. We previously proposed a figure of \$350,000 to cover these costs. Recognizing the institutional limitations imposed on the government, we think it is appropriate, in order to minimize oversight costs, to limit the number of participants in the Consent Decree process once an agreement in principle is reached. We would appreciate your thoughts on how best to resolve this issue. As we have previously stated, the issue of future response costs remain an item that needs to be addressed in some detailed manner and the terms incorporated into our agreement.

NRD Settlement: We understand your letter as an acceptance of our offer of \$2 million in payment of natural resource damages and the corresponding environmental release which was detailed in our previous offer. It also appears that there is agreement on trail amenities and the scope of the release.

As stated in my letter of November 4, Union Pacific's offer is contingent on entry of the Consent Decree which reflects the response actions that have been tentatively agreed to by the parties, and the approval by the STB to all conditions precedent to the salvage and interim trail use certification.

It is our view that Union Pacific's offer of settlement as reflected in our previous correspondence and as revised by the terms of this letter, should serve as the basis for an agreement in principle by all parties. We recognize that given the complexity of these negotiations, any agreement in principle will, by necessity, fail to address issues that will arise as we proceed further. We would request that you review the terms of this amended offer with your clients and that we schedule a conference call as soon as possible in order to resolve any remaining items. If we can resolve the remaining issues, we would propose that as quickly thereafter as possible we complete and sign an agreement in principle. It is our understanding that once such an agreement is in place, the EE/CA can be released for public comment and public discussion of the response and trail construction can begin.

Very truly yours,


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